

FILED - GR

August 26, 2019 2:53 PM

CLERK OF COURT

U.S. DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

BY: mkc SCANNED BY: TR 8/26/19

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**United States District Court**

District

Western District of Michigan

Name of Movant

Bobby Pollard

Prisoner No.

Case No.

Place of Confinement

Federal Correctional Institution Oxford

UNITED STATES OF AMERICA

V. Bobby Pollard

(name under which convicted)

MOTION1. Name and location of court which entered the judgment of conviction under attack Western District of Michigan, Grand Rapids.**1:19-cv-683**2. Date of judgment of conviction 06/06/ 2019**Janet T. Neff**3 Length of sentence 102 months**U.S. District Judge**4. Nature of offense involved (all counts) 922(g)(1)

5. What was your plea? (Check one)

(a) Not guilty ☒(b) Guilty ☐(c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

N/A

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☒(b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☒ Asked counsel to file notice of appeal.

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☒

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9. If you did appeal, answer the following:

- (a) Name of court N/A
- (b) Result N/A
- (c) Date of result N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes", give the following information:

- (a) (1) Name of court N/A
- (2) Nature of proceeding N/A
- (3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? N/A

Yes ☐ No ☐

(5) Result N/A

(6) Date of result N/A

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result N/A(6) Date of result N/A

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒(2) Second petition, etc. Yes ☐ No ☒

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Ineffective assistance of trial counsel.

Supporting FACTS (state *briefly* without citing cases or law) _____

I instructed counsel to file an appeal in this, however,
counsel file no notice of appeal. Petitioner had a
conversation with counsel in which counsel asserted
that he did not see any grounds for appeal, notwith-
standing counsel's feelings, I never told him not to
file an appeal, counsel should have filed a NOA.

B. Ground two: Mr. Pollard is actually innocent of his
conviction under 922(g) pursuant to Rehaif v. U.S.

Supporting FACTS (state *briefly* without citing cases or law): _____

The United States Supreme Court recent decision in
Rehaif v. United States mandates that a defendant being
prosecuted under 922(g) must be found guilty beyond
a reasonable doubt of knowing he was a prohibited
person pursuant to the relevant category of persons
in this case, Mr. Pollard was not found guilty of all
of the elements that constitutes the offense in which
he was indicted.

Supporting FACTS (state *briefly* without citing cases or law): N/A

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D. Ground four: N/A

Supporting FACTS (state *briefly* without citing cases or law): N/A

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: claims of IAC are properly

brought on 2255. And, ground two results from an interveining
supreme court decision.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial Not Known

(d) At sentencing _____

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(e) On appeal not known

(f) In any post-conviction proceeding

(g) On appeal from any adverse ruling in a post-conviction proceeding

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? N/A

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

7-28-19

(date)



Signature of Movant

Certificate of Service

I, Bobby Pollard, hereby certify, under the penalty of perjury, that I sent a true and correct copy of my 2255 to the Clerk of the Court at 1 division Ave, North, Room 200, Grand Rapids, MI on this Jul Day of 28th, 2019, by placing said motion in FCI-Oxford's Legal Mail with First Class Postage Paid.

I further swear to being In Forma Pauperis due to the limited resources and restrictions of my current confinement, and respectfully ask The Clerk of The Court to make the legally required copies, also effective service on ALL ECF RECIPIENTS requiring notice in this case.

Sincerely Submitted,



(Signature)

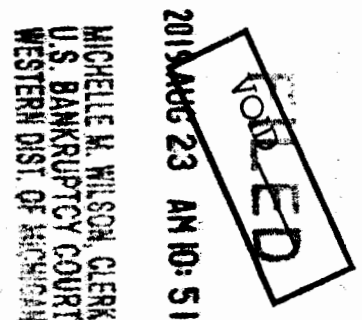
Name: Bobby Pollard

Inmate ID# 22324-040

Federal Correctional Institution

P.O. Box 1000

Oxford, Wisconsin 53952

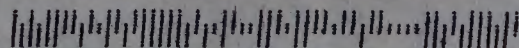


UNITED STATES BANKRUPTCY COURT

CLERK'S OFFICE
ONE DIVISION, NORTH
GRAND RAPIDS, MICHIGAN 49503
OFFICIAL BUSINESS



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